CRP 104/2000
BEFORE
HON'BLE JUSTICE B P KATAKEY

This revision petition is directed against the judgment dated 17.9.1999 and decree dated 21.9.1999, passed by the learned Civil Judge (Senior Division), Tinsukia, in Title Appeal No. 3 of 1990 dismissing the appeal preferred by the present revision petitioner by affirming the judgment and decree dated 10.11.1990, passed by the learned Munsiff No. 2, (now Civil Judge, Junior Division), Tinsukia, in Title Suit No. 17/1986.

2. The predecessor-in-interest of the present opposite parties filed Title Suit No. 17/1986 in the Court of the learned Munsiff No. 2, (now, the Civil Judge, Junior Division), Tinsukia, against the revision petitioner praying for a decree for eviction on the ground of defaulter contending inter alia that the father of the defendant/revision petitioner took the suit premises on monthly rent of Rs. 26/- according to the English calendar payable within the first week of succeeding month in which the rent becomes due, and that though the defendant's father regularly paid the rent during his life time, but after his death the revision petitioner since the month of October, 1983 has defaulted in payment of the rent. The defendant/ revision petitioner contested the said proceeding by filing written statement stating inter alia that his father was not a tenant under the plaintiff in respect of the house but in respect of the vacant land whereupon his father constructed the permanent structure within five years from the date of commencement of tenancy and hence is protected under the provisions of the Assam Non Agricultural Urban Areas Tenancy Act, 1955 (hereinafter referred to as the Tenancy Act, 1955 )

3. The learned trial Court on the basis of the pleadings framed the following issues:

1) Whether there is any cause of action for the suit?
2) Whether the suit is barred by the provisions of the Assam Non Agricultural Urban Areas Tenancy Act?
3) Whether the father of the defendants late Palita Rai was the monthly tenant under the Plaintiff in respect of the suit premises and after his death the defendants stepped into the shoes of their father?
4) Whether the father of the defendants late Palita Rai possessed the land on which the suit premises situate on yearly rent from its owner and constructed the house thereon?
5) Whether the defendants are the defaulter in payment of rent?
6) Whether the plaintiff is entitled to get the decree as prayed for?
7) To what relief/ reliefs the parties are entitled?

4. The plaintiff, in support of his case, examined two witnesses and a number of documents were exhibited. The defendant also examined three witnesses and exhibited a number of documents in support of his case. The learned Munsiff, upon appreciation of the evidence on record, decreed the suit by rejecting the plea of the defendant that his father was a tenant in respect of the vacant land and not in respect of the house. Being aggrieved, the defendant preferred an appeal in the Court of the learned Civil Judge (Senior Division), which was also dismissed by affirming the judgment and decree passed by the learned trial Court.

5. Heard Mr. Kamal Agarwal, learned counsel for the revision petitioner and Mr. G. Singh, leanred counsel for the opposite party.

6. Mr. Agarwal, learned counsel for the revision petitioner has contended that it is evident from the evidences on record that the defendant's father was never a tenant in respect of any house as alleged by the plaintiff but he was a tenant in respect of the vacant plot of land and within five years from the date of commencement of the tenancy, his father constructed the permanent str

ucture thereon and therefore the defendant is protected under the provisions of the Tenancy Act of 1955. Mr. Agarwal has further contented that the issue Nos. 2 and 3 have, therefore, been wrongly decided by the courts below against the defendant and in favour of the plaintiff. It has further been submitted that since the defendant was a tenant in respect of the vacant land and not in respect of the houses as claimed by the plaintiff, the suit under the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as the Rent Control Act, 1972 is not maintainable.

7. Mr. Singh, on the other hand, referring to the findings recorded by the learned Courts below has submitted that it is evident from the discussion made in the judgment that the plaintiff by adducing oral and documentary evidence has proved that the tenancy was in respect of the house and not in respect of the vacant land as contended by the defendant. It has further been submitted that the defendant has failed to prove that the tenancy was in respect of the vacant land and not in respect of the house and within five years from the date of commencement of such tenancy, the father of the defendant constructed permanent structure. Hence, the learned Courts below have rightly decreed the suit in favour of the plaintiff.

8. The only contention, which has been raised in the present revision petition, is that the father of the defendant being tenant in respect of the vacant land and having constructed permanent structure within 5 (five) years from the date of commencement of the tenancy, the defendant is protected under the provisions of the Tenancy Act, 1955 and hence, the suit under the Rent Control Act, 1972 is not maintainable.

9. The learned trial Court in issue Nos. 2 and 3 has made detail discussion of the evidences on record. It appears from the said discussion and evidences on record that the plaintiff by adducing oral and documentary evidence has proved that the tenancy was in respect of the house and not in respect of the land. On the other hand, the defendant though contended that the tenancy was not in respect of the land, the learned trial Court has found that defendant could not prove such tenancy and even tenancy agreement, which according to the defendant was executed, was not proved before the Court. The trail Court has also disbelieved that such written agreement was stolen. There being no evidence on record that the tenancy was created in respect of the vacant land only and also there being no proof that the defendant has constructed permanent structure within five years from the date of commencement of such tenancy, the learned Courts below have rightly held that the tenancy was in respect of the house only. It is also evident from the discussion of the evidences on record by the learned Courts below that the plaintiff could proof that the tenancy was in respect of the house and monthly rent was not paid in respect of the said house since October 1983. Such concurrent finding of fact cannot be disturbed in revision petition under Section 115 of the C.P.C. Hence, the revision petition dismissed being devoid of any merit.

10. At this stage, it has been submitted by Mr. Agarwal, learned counsel for the revision petitioner, that a talk of compromise between the parties is going on. Mr. Singh, the learned counsel for the opposite party has submitted that he has no instruction in this regard.

11. It is needless to say that the dismissal of the revision petition will not be a bar to arrive any settlement between the parties. Considering submission of the learned counsel for the parties and keeping in view the long occupation of the suit premises in question, I allow the revision petitioner to occupy the said premises for a period of 1 (one) year from today on monthly payment (according to English Calendar months) of Rs. 150/-(Rupees one hundred fifty) within 7 (seven) days of the succeeding month, subject to filing an undertaking by the revision petitioner before the learned trail Court within 30 (thirty) days

from today that on completion of the said period of 1(one) year from today, i.e., on or before 31st of August, 2008, he shall hand over the vacant possession of said premises to the opposite parties herein. It is also made clear that payment of the aforesaid sum of Rs. 150/- per month shall not create any new tenancy in favour of the revision petitioner. Needless to say that in case of violation of the aforesaid condition and non-filing of the undertaking within the specified period, the opposite parties shall be at liberty to put the decree in execution.

12. The revision petition is accordingly dismissed. No cost. Registry is directed to send down the records forthwith.